IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3448 of 1996

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHAGUJARAT MILL MAZDOOR UNION & 5 - Petitioner(s)

Versus

AHMEDABAD ADVANCE MILLS CO.LTD & 3 - Respondent(s)

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Appearance :

GIRISH PATEL ASSOC for Petitioner No(s).: 1,2,3,4,5,6.

MR SHUKLA for NANAVATI & NANAVATI for Respondent No(s).: 1.
MRS HANSA PUNANI for Respondent No(s).: 2,3.
MR PRANAV G DESAI for Respondent No(s).: 4.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 08/08/2005

ORAL JUDGMENT

1.0 The petitioners have prayed for the following reliefs;

> "(A) Declaring the action of the respondent company as "illegal closure" in clear violation of the provisions of Section 25-O of the I.D. Act and null and void and quashing the same;
>
> (B) Directing the respondent no.1 company to give wages to each workman per month before 12th of every month as per the monthly wages of the workmen;
>
> (C) Directing the respondent company to pay the arrears of wages from March, 1995 up to the present day except the amount already paid to the workmen as mentioned above;
>
> (D) Directing the respondents no.2 & 3 to take steps for compelling the respondent no.1 to pay wages regularly to the workmen and comply with the requirements of the I.D. Act and the B.I.R. Act;
>
> (E) Directing the respondent no.1 Company to start its operations and to run the Mills; &
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> (F) Making any other appropriate order."

2.0 The petitioner no.1 Union is a registered Trade Union representing the workmen engaged in the respondent no.1 Company and the other petitioners are the workmen engaged by the said Company. Respondent no.1 is a Textile Mill engaged in the business of manufacture and sale of textile products.

2.1 The brief facts of the case are that in the month of March, 1995, the petitioners apprehended that the respondent Company intended to close down its operations.

Therefore, they made several representations to various authorities complaining about the said intention of the respondent Company.

2.2 On 13.03.1995 the respondent Company put up a Notice informing the workmen that it intended to close down its operations, but, shall continue to pay the workers their wages and that the workers shall have to come to the Company every day and register their presence.

2.3 It is the case of the workmen that since March 1995, they had continued to attend the Company and had also marked their presence, but, were not been paid any wages, except some amount under the interim orders of the Labour Court and of this Court in petitions filed by a Secured Creditor.

2.4 Being aggrieved by that the petitioners approached the Labour Court by filing Application No. 150 of 1995 under the provisions of the Bombay Industrial Relations Act (for short, “the B.I.R. Act”), claiming various reliefs for restraining the respondent Company from altering the conditions of service etc. of the workmen. The Labour Court by order dated 30.04.1986 dismissed the

said application.

2.5 It is the case of the petitioners that the respondent Company though declaring that it has not closed down its operations, has in fact closed its operations and that no production activity was being done. Hence, by way of this petition, the petitioners have prayed for the aforesaid reliefs.

3.0 Before proceeding with the matter, it be noted that the Textile Labour Association (T.L.A.), Ahmedabad, which is a Representative Union for the textile industry under the provisions of the B.I.R. Act, 1946 had filed Application No. 294 of 1996 before the Labour Court, Ahmedabad challenging the said action of the respondent Mill. However, the said application was dismissed by the Labour Court vide order dated 28.11.2003. Against the said order, the T.L.A preferred an appeal before the Industrial Court, Ahmedabad, which is pending for adjudication.

4.0 Mr. Girish Patel learned Senior Advocate for the petitioner has submitted that the petitioner Union is not a representative Union and that its main application was

rejected on the ground that it was not maintainable. He has submitted that it will not possible for the petitioner Union to represent the case of each of the employees who are not the members of the representative Union.

4.1 Mr. Patel has relied upon a decision in the case of ***Oswal Agro Furance Ltd and Another v. Oswal Agro Furane Workers Union and others reported in (2005) 3 S.C.C. pg.224***, wherein it has been held that prior permission constitutes a condition precedent for retrenchment and / or closure of the unit and that the same is mandatory. It has been further held therein that need for such permission is not obviated by settlement between the employer and workmen under Section 18 r/w S.2(p) of the Industrial Disputes Act, 1947.

4.2 The next decision relied upon by Mr. Patel is in the case of ***Misc. Mazdoor Sabha v. State reported in 1992(2) G.L.R. pg.1065***, wherein it has been held that a private company is a person as contemplated by Article 226 of the Constitution of India.

5.0 Mr. Shukla learned advocate for the respondent has

contended that the respondent no.1 Company is not an agency or instrumentality of the “State” within the meaning of Article 12 of the Constitution of India burdened with public duty under the provisions of the Industrial Disputes Act, 1947. He has further submitted that the petition is not maintainable under Article 226 of the Constitution of India in view of the fact that respondent no.1 Company is governed under the provisions of the Bombay Industrial Relations Act, 1946 and that there is no “closure” as defined under the provisions of the Industrial Disputes Act, 1947. He has, therefore, submitted that the appropriate remedy available to the petitioner is under the Bombay Industrial Relations Act, 1946.

5.1 Mr. Shukla has relied upon a decision in the case of ***Shramik Uttarsh Sabha v. Raymond Woolen Mills Ltd. And ors. Reported in 1995 II L.L.J pg. 301***, wherein it has been held that in matters where an embargo is placed upon representation by anyone other than representative union concerning all or most of the employees, no union other than representative union can appear in proceedings relating to unfair labour practice other than those specified in Item 2 and 6 of the MRTU & PULP Act.

5.2 Mr. Shukla has next relied upon a decision in the case of ***Raghuvir Prasad Mali, Secretary, Maha Gujarat Mill Mazdoor Union v. The General Manager, Arvind Mills Ltd. & ors reported in 1996(1) G.L.R. pg. 533***, wherein it has been held that a dispute which affects the employer and the class of employees as a whole can be settled through the representative Union only and that individual employees or a Union which is not a representative Union cannot claim a right to agitate such an issue. It has been further held therein that in the exercise of writ jurisdiction, the High Court will not entertain such contentions which cannot even be taken before the Industrial Courts.

5.3 Mr. Shukla has next relied upon a decision in the case of ***Gujarat State Fertilizer's Co. Ltd. & anr v. Association of Officers, G.S.F.C., Fertilizernagar reported in 1995(2) G.L.H. pg.179***, wherein it has been held that a Company is not a “State” performing any public duty or function, and therefore, Article 21 of the Constitution was not attracted.

6.0 I have heard learned counsel for the parties and

perused the documents placed on record. From the affidavit-in-reply filed on behalf of respondent no.1 Company, it appears that during the pendency of the aforesaid proceedings, the respondent Company and the Textile Labour Association, Ahmedabad had entered into a Settlement on 12.02.1997. According to the said Settlement, the respondent Company had accepted the resignations of 1180 employees till 26th March, 2004, 56 employees had expired and 201 employees had retired on reaching the age of superannuation. It is further stated therein that the respondent Company has also paid the legal dues and compensation in terms of the said settlement to approximately 2014 employees. However, about 136 employees have still not submitted their resignation as per the said Settlement. It is said affidavit-in-reply it is clarified that the respondent Company shall require about 577 employees only for running the Spinning Unit, but, since the excess employees have not yet submitted their resignations, the respondent is finding it difficult to restart the Spinning Unit.

7.0 The fact remains that the Board for Industrial & Financial Reconstruction (for short, “the B.I.F.R.”) has

sanctioned a Scheme for the rehabilitation of the respondent Company. According to the said Sanctioned Scheme, out of 2150 workers, approximately 577 workers shall be retained for the spinning division only and the balance 1573 shall be retrenched after paying the necessary compensation. The retainable workers shall be reinstated on fresh terms and conditions.

7.1 The said Sanctioned Scheme provides as under;

(i) The Textile Labour Association (TLA) be directed to implement the 1997 agreement in its true spirits.

(ii) To ensure that the minimum number of resignations required as per the TLA Agreement / award will be received.

(iii) The workers will not create any problem in the disposal of the surplus land, machineries and other properties and allow peaceful disposal of the same in the interest of the rehabilitation of the company.

(iv) To abstain from any illegal and wildcat strikes, go slow, etc. and to work in harmony with the management for the revival of the unit.

(v) To accept minimum bonus under the Payment of Bonus Act, 1965 during the rehabilitation period.

(vi) T.L.A to discuss with the management and consider in terms of their 1997 agreement with the management, withdrawal of all legal/other proceedings pending before various authorities/court/tribunal/labour court in the interest of rehabilitation.

(vii) To agree for the freeze on the prevailing wages as on the date of commencement of Spinning Unit. This would, however, not cover normal increments/increase in dearness allowance (DA) applicable to industrial workers as per the State Government Policy.

7.2 Looking to the peculiar facts and circumstances of the case and considering the fact that the “Scheme” framed by the B.I.F.R for the rehabilitation of the respondent Company appears to be feasible, I am of the opinion that the claims of the petitioners will also be governed by the terms of the said Sanctioned Scheme framed by the B.I.F.R. Moreover, it is not in dispute that the B.I.F.R has sanctioned the “scheme” in question,

after hearing the representative of the employees and that the same has not been challenged by any of the parties, meaning thereby, that the same has continued to remain in operation.

7.3 In above view of the matter, it is observed that the petitioners will be governed by the said Sanctioned Scheme framed by the B.I.F.R for the rehabilitation of the respondent Company. The respondent Company is directed to implement the said Scheme of the B.I.F.R in its true spirit. Thus, the reliefs claimed by the petitioners have now become academic.

8.0 However, so far as the contention that the petitioner Union will not be in a position to represent the case of each of the workers who are not the members of the representative Union is concerned, I am of the opinion that the representative Union has special rights under the provisions of the Bombay Industrial Relations Act, and, more particularly, when the representative Union has even represented the workers before the B.I.F.R. This Court cannot risk industrial peace which has been attained over a long period of time by issuing any directions in the matter.

8.1 Apart from that, since the issue is still pending before the Labour Court, this Court cannot come in the way of the parties. It be noted that this Court has not disposed of the petition on the ground of maintainability, but, has done it in view of the subsequent development since it will not be appropriate for this Court to entertain this petition at this stage.

9.0 In above view of the matter, I am of the opinion that no fruitful purpose will be served by entertaining this writ petition at this stage. However, it is clarified that the petitioners will be governed by the said Sanctioned Scheme framed by the B.I.F.R for the rehabilitation of the respondent Company. The respondent Company is directed to implement the said Scheme of the B.I.F.R in its true spirit. It is, however, observed that if any issue is sought to be raised, the appropriate remedy for doing so is to approach the B.I.F.R through the representative Union. With the above observations, the petition stands disposed of.

(K. S. JHAVERI, J.)

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